Mox-Linde Gases Sdn Bhd (formerly know as MOX Gases Sdn Bhd and prior to that as MOX Gases Bhd) v Wong Siew Yap

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO 22-1514 OF 2010
SURAYA OTHMAN J
29 OCTOBER 2014

Tort — Defamation — Libel — Whether permanent injunction necessary to prevent defendant from continuing to libel plaintiffs through emails — Whether defendant's lack of remorse and continued libeling of plaintiffs even after latter obtained interim injunction against her warranted award of aggravated damages to plaintiffs besides general damages

Apart from seeking RM200,000 in general damages and RM300,000 in aggravated damages against the defendant for libel, the plaintiffs in the instant action sought a permanent injunction to restrain the defendant and her agents from continuing to publish and circulate defamatory remarks about them through emails. The first plaintiff was an industrial gas supplier in Malaysia and a subsidiary of an international gas and engineering company based in Germany. The second plaintiff was the first plaintiff's managing director. They claimed that in several emails sent to various parties both within Malaysia and abroad, the defendant made several allegations that were defamatory of them. Although the plaintiffs obtained an interim injunction from the High Court to restrain her from further publishing the libel, the defendant breached the injunction order and continued circulating even more defamatory emails. For breach of the interim injunction, the plaintiffs obtained a committal order against the defendant but attempts to serve her with the warrant of committal failed. The defendant failed to enter appearance or file a defence or attend the trial in the instant action.

Held, allowing the claim, granting the permanent injunction sought by the plaintiffs and awarding them RM150,000 as general damages and RM50,000 as aggravated damages:

(1) The court found the publications made by the defendant, both before and after the interim injunction against her was obtained, were clearly defamatory of the plaintiffs. There was a great likelihood of the defendant continuing to libel the plaintiffs if she was not restrained by a permanent injunction (see paras 24(c) & 32).

(2) There was complete lack of remorse on the defendant's part and an absence or refusal to correct, retract or apologise. The plaintiffs were entitled to aggravated damages so as to send a strong message to the

defendant, who was in a position to disseminate information widely through the internet, that she had to exercise a proper degree of care and diligence not to injure others. The court was of the view RM150,000 for general damages and RM50,000 for aggravated damages was sufficient to vindicate the plaintiffs in this case (see paras 35(d), 36–37).

[Bahasa Malaysia summary

Selain daripada memohon RM200,000 dalam ganti rugi am dan RM300,000 dalam ganti rugi tambahan terhadap defendan untuk fitnah, plaintif-plaintif dalam tindakan ini memohon injunksi kekal untuk menghalang defendan dan ejennya daripada meneruskan untuk menerbitkan dan mengedarkan kenyataan fitnah mengenai mereka melalui emel. Plaintif pertama adalah pembekal gas industri di Malaysia dan syarikat subsidiari gas antarabangsa dan kejuruteraan yang berpusat di Jerman. Plaintif kedua adalah pengarah urusan plaintif pertama. Mereka menuntut bahawa dalam beberapa emel yang dihantar kepada beberapa pihak dalam Malaysia dan luar negara, defendan membuat pelbagai dakwaan bahawa adalah fitnah terhadap mereka. Walaupun plaintif-plaintif memperolehi injunksi interim daripada Mahkamah Tinggi untuk menghalangnya daripada selanjutnya menerbitkan fitnah tersebut, defendan melanggar perintah injunksi dan berterusan mengedar lebih banyak emel fitnah. Untuk perlanggaran injunksi interim, plaintif-plaintif memperolehi perintah komital terhadap defendan tetapi percubaan untuk menyerahkan ke atasnya dengan waran komital gagal. Defendan gagal untuk memasukkan kehadiran atau memfailkan pembelaan atau menghadiri perbicaraan dalam tindakan ini.

Diputuskan, membenarkan tuntutan, memberikan injunksi kekal yang dipohon oleh plaintif-plaintif dan mengawardkan kepada mereka RM150,000 sebagai ganti rugi am dan RM50,000 sebagai ganti rugi tambahan:

(1) Mahkamah mendapati penerbitan yang dibuat oleh defendan, sebelum dan selepas injunksi interim terhadapnya diperolehi, adalah jelas fitnah terhadap plaintif-plaintif. Terdapat kemungkinan besar defendan meneruskan untuk memfitnah plaintif-plaintif jika dia tidak dihalang dengan injunksi kekal (lihat perenggan 24(c) & 32).

(2) Terdapat kekurangan penyelasan dipihak defendan dan ketiadaan atau keengganan untuk memperbetulkan, menarik balik atau memohon maaf. Plaintif-plainti berhak kepada ganti rugi tambahan seperti menghantar mesej yang kukuh kepada defendan, yang dalam kedudukan untuk menyebarkan maklumat secara meluas melalui internet, bahawa dia terpaksa menjalankan tahap sebenar berjaga-jaga dan ketekunan untuk tidak mencemarkan yang lain. Mahkamah berpandangan bahawa RM150,000 untuk ganti rugi am dan RM50,000 untuk ganti rugi tambahan adalah mencukupi untuk menyokong plaintif-plaintif dalam kes ini (lihat perenggan 35(d), 36–37).]]]

Notes

For cases on libel, see 12(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 523–723.

Cases referred to

Chan Yoke Sim v Choong Teck Fook & Ors [2014] 2 MLJ 117; [2013] 1 LNS 425, HC (refd)

Dato' Mohamad Salim Fateh bin Fateh Din v Nadeswaran a/l Rajah (No 1) [2012] 10 MLJ 203; [2013] 4 CLJ 961, HC (refd)

Ling Wah Press (M) Sdn Bhd v Tan Sri Dato Vincent Tan Chee Yioun [2000] 4 ML J 77; [2000] 3 CLJ 728, FC (refd)

MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & other appeals [1995] 2 MLJ 493; [1995] 2 CLJ 912, FC (refd)

Ng Koo Kay Benedict and Another v Zim Integrated Shipping Services Ltd [2010] SGHC 47, HC (refd)

Pemegang Amanah Lembaga Zakat dan satu lagi lwn Hj Saari bin Sungib [2014] 10 MLJ 65; [2013] 10 CLJ 588, HC (refd)

Sutcliffe v Pressdram [1991] 1 QB 153, CA (refd)

Syed Husin Ali v Sharikat Perchetakan Utusan Melayu Berhad & Anor [1973] 2 MLJ 56; [1973] 1 LNS 146 (folld)

Tan Lan Chu v Robbin Ong Kim Chuan [2011] MLJU 632; [2011] 1 LNS 826; [2012] 5 MLRH 420, HC (refd)

Legislation referred to

Rules of Court 2012 O 53

Joanna Thevathasan (Rajes Hisyam Rahim & Gopal) for the plaintiff.

Suraya Othman J:

INTRODUCTION

[1] The plaintiff's claim against the defendant are for an order for a permanent injunction to restrain the defendant and her agents from publishing and circulating defamatory words about the plaintiffs and general damages and aggravated damages for libel.

[2] The defendant has from the beginning of this action in 2010 not entered appearance to date nor has she filed any defence to the plaintiffs' claim, and neither was she present in court on the date of the trial on 13 August 2014 despite a letter from the plaintiffs' solicitors informing her of the trial date in the Shah Alam High Court and requesting her attendance, having being sent to her on 30 July 2014 by registered post and also by hand delivering the same to the defendant's last known address on 31 July 2014 and 1 August 2014. (The

plaintiffs' affidavit of service was duly filed on 5 August 2014).

CHRONOLOGY OF EVENTS UPON FILING OF THIS ACTION

[3] On 26 November 2010, the plaintiffs' filed a writ of summons and statement of claim and an application for an interim injunction to restrain the defendant from publishing defamatory words about the plaintiffs ('the said interim injunction') and the same was personally served on the defendant on 29 December 2010 who presented herself at the plaintiffs' solicitors office, (refer to the affidavit of service filed on 3 January 2011).

[4] On 18 April 2011, the order for the plaintiff's application for the said interim injunction was granted by the High Court of Shah Alam (another court) pending the completion and disposal of the trial of this action.

[5] The order for the said interim injunction was served vide the plaintiffs solicitors letter dated 5 July 2011 on the defendant on 6 July 2011 by registered post and personal delivery at the defendant's last known address on 7 November 2011.

[6] The plaintiffs then discovered that defendant had breached the said interim injunction by again circulating 14 emails containing words that were defamatory of the plaintiffs in express breach of the court order for the said interim injunction against her. These said emails have been exhibited in CBDA from pp 98–102.

[7] The plaintiffs accordingly sought leave of the court to commence committal proceedings against the defendant and the order for leave to commence committal proceedings (ex parte) was granted on 4 October 2013 (another court).

[8] Thereafter the plaintiffs filed their application for a committal order against the defendant on 17 October 2013 under O of the Rules of Court 2012, and the committal order dated 18 March 2013 was granted by the court (another court).

[9] Pursuant to this a warrant of committal was issued by the court on 16 April 2014 and two attempts were made to execute the same by the court bailiff together with the local police on 19 June 2014 and 21 July 2014 respectively at both the defendant's last known addresses. However, both attempts were unsuccessful.

A THE BRIEF FACTS/SUMMARY OF THE PLAINTIFFS' CLAIM

[10] The plaintiffs make their claim action in defamation based on three defamatory publications by the defendant, circulated by way of emails to various parties and organisations, which are:

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(a) the emails dated 14 August 2010 with three attachments thereto, which was forwarded by the defendant vide 3 subsequent emails dated 27 August 2010, 24 September 2010 and 28 September 2010, appending the said emails of 14 August 2010 ('the first publication'). (see pp 9-25 C CBD). The three attachments to the said email of 14 August 2010 was a letter dated 26 August 2008 from Maybank, a letter from Securities Commission dated 5 May 2009 and a letter dated 17 May 2009 from the defendant to Senator Murugiah and others. (see pp 26-29 CBD);

D (b) the email dated 15 October 2010 (hereinafter referred to as 'the second publication'); and

(c) the email dated 31 October 2010 (hereinafter referred to as 'the third publication');

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The first publication (see the emails on pp 9–11, 12, 15 & 20 CBD dated 14 August 2010, 27 August 2010, 24 September 2010 and 28 September 2010 respectively)

F **[11]** The first publication was issued by way of emails that were circulated to various institutions within Malaysia and companies/organisations overseas which are directly and/or indirectly linked or connected to the first plaintiff and/or the Linde Group.

G (a) the email dated 14 August 2010 was sent to various local and/or government agencies. (see email on pp 9-11 CBD);

(b) the defendant then went on to attach the email dated 14 August 2010 and sent it to the government agencies and circulated it via forwarded emails to individual recipients and companies which/who were directly H within the Linde Group to which the first plaintiff belongs and also companies indirectly connected to or associated or indirectly connected to the first plaintiff which were overseas based organisations on 27 August 2010, 24 September 2010 and 28 September 2010, such as the Singapore I Linde Group, Korea Linde Group, Canada Linde Group, France Linde Group, Wonderwind (a German company), Chemogas, BOC- a United Kingdom health care company, Airproducts & the Temasek Group in Singapore (see pp 12,15 and 20 CBD respectively wherein the list of recipients is published);

[12] Briefly, inter alia, in the first publication the defendant has made various defamatory statements both expressly and by imputations/innuendos and has also made accusations against the plaintiffs, which meant and were understood to mean the following:

> [95] that the second plaintiff and his team had used their position in the first plaintiff to abuse their power and cause corruption;
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> [95] that the first plaintiff and/or its management can control and/or influence the actions of the police to the detriment of the defendant and/or her brother;
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> [95] that the second plaintiff and/or second plaintiff's team used their position in the first plaintiff and lodged a false police report which led to the arrest of the defendant and her brother wherein the defendant was remanded and with the intent of causing the defendant's company to lose its distributorship with the first plaintiff;
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> [95] that the first plaintiff's and/or second plaintiffs team member had falsified documents to realise the defendant's bank guarantee previously given;
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> [95] that the first plaintiff and/or second plaintiff's team had confiscated/taken all the defendant's customers gas cylinders and/or wrongfully interfered with the defendants trade/business;
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> [95] that both the plaintiffs had filed/initiated a false claim against the defendant in the high court and/or obtained a court judgment on the wrong basis which resulted in the winding up of the defendant's company on 10 January 2007;
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> [95] that the first plaintiff and/or the first plaintiffs management can control the Securities Commission ('SC') and/or influence the SC and/or direct the SC to close a case against the first plaintiff to the detriment of the defendant;
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> [95] that the second plaintiff had misappropriated millions of ringgit or is in possession of millions of ringgit which rightfully belongs to the first plaintiffs shareholders and has caused the first plaintiff to make less profit since 1980;
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> [95] that the second plaintiff had instructed the first plaintiff's lawyers to inform financial institutions that the defendant and her brother had purportedly stood as guarantors which had resulted in the defendant being falsely blacklisted for bankruptcy;
>
> [95] that the first and/or second plaintiff's are thieves and/or have conspired to make false claims against the defendant.

[13] The three attachments that were circulated along with the emails of the

first publication contained the following defamatory imputations/innuendos:

The first two attachments – ie the letter dated 26 August 2008 from Maybank and the letter from Securities Commission dated 5 May 2009 (see pp 26-27 CBD).

(a) that due to the purported restructuring of Malaysian Oxygen Berhad to MOX Gases Bhd, the plaintiff could not call upon the defendant company's RM 40,000 bank guarantee;

(b) that the first plaintiffs customer service centre manager had falsified Malaysia Oxygen Berhad's letterhead on 2 June 2004 to realise the defendant company's RM 40,000 bank guarantee;

(c) that the first plaintiff and/or its customer service centre manager Hui Feng Huey had done something wrong, which should be investigated by the police;

(d) that the missing gas cylinders that went missing, went missing from the first plaintiffs premises and/or that it was the first plaintiff that was somehow responsible for the missing gas cylinders.

[14] From the third said attachment (see pp 28–29 CBD):

(a) that the first plaintiff had victimised the defendant by making a false police report which had resulted in the defendant being kept in remand in the Subang Jaya police lock up for ten days;

(b) that the first plaintiff and/or second plaintiff had not honoured the General Manager's of ISP MOX (at the material time) letter as to the temporary suspension of the defendant's company account;

(c) that there weren't any gas cylinders lost and/or is a verbal admission by the first plaintiff's staff to that effect; and

(d) that the first plaintiff management can influence and/or direct the SC to close the defendant (Lee Pek Lan's) case and/or conceal the truth and/or tell lies and/or delay matters.

(see paras 10,14,16 and 18 in the plaintiffs statement of claim 'SOC' pp 80–83, 85–86, 87–91 in *Ikatan Pliding* 'IP').

[15] The plaintiffs then via their solicitor's letter (Messrs Rajes Hisham Rahim & Gopal) dated 7 October 2010 (see pp 30–38 CBD) put the defendant on notice as to the clear defamatory nature of her four emails and the three attachments thereto and demanded ,inter alia, that the defendant cease and desist from any further defamatory conduct, issue a public apology and retraction and undertake not to repeat the said defamatory allegations.

[16] The defendant responded to the plaintiffs' solicitor's letter by circulating the email of 15 October 2010 ie the second publication.

The second publication (see the emails on pp 56–63 CBD dated 15 October 2010)

[17] The words used in the second publication meant and were understood to mean in their natural and ordinary meaning or alternatively by way of innuendo, in addition to the allegations in the first publication (referred to para 3 above) the following:

> [95] that notwithstanding complaints made to the chairman of the first plaintiff, no action was taken by him;
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> [95] that the second plaintiff is not concerned about litigation and/or the legal fees involved, as his legal fees are paid by the first plaintiff;
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> [95] that the first plaintiff and/or second plaintiff can use litigation proceedings to drain the defendant's finances via legal fees;
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> [95] that the first plaintiff and/or second plaintiff can use the law/litigation proceedings to wrongly silence the defendant;
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> [95] that the first plaintiff and/or second plaintiff can use the law/litigation proceedings to prevent the government and/or third parties from discovering the purported truth;
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> [95] that the first plaintiff and/or second plaintiff and/or their lawyers can influence even the defendant company's lawyers to the detriment of the defendants company and had the defendant blacklisted;
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> [95] that second plaintiff uses the first plaintiff's Chairman through his relations can influence the Malaysian police to purportedly arrest the defendant and/or her brother;
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> [95] that the first plaintiff and/or second plaintiff were responsible for the purported tarnishing of the defendant and/or her brothers alleged reputation; and
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> [95] that the first plaintiff and/or second plaintiff are misusing the law in order to purportedly victimise or 'bully' the defendant and/or her brother and/or destroy the defendants company and/or to cause them suffering.

(see para 24 in the plaintiffs' SOC pp 107–109 IP).

(a) the defendant's said email was her reply to the plaintiffs' legal notice dated 7 October 2010, but this was however copied to a large number of other readers who were not related to the matter.

(b) from the list of recipients, the defendant clearly intended for a wider group of persons to read her email in the second publication, which included the first plaintiffs competitors (like the Air Products Group) and other unrelated parties such as the Temasek Group.

[18] As a result of the second publication, the plaintiffs sent a final notice to the defendant dated 29 October 2010 to inform the defendant that since she had willfully persisted and continued her defamatory conduct via the second publication, the plaintiffs would no longer be engaging her by way of further correspondence and would proceed to enforce their legal rights.

The third publication (see email on page 68–71 CBD dated 31 October 2010)

[19] Once again the defendant responded to the plaintiffs solicitor's letter of 29 October 2010 by circulating the third publication which once again was sent to a wide range of readers which included the first plaintiff's competitors (such as the Air Products Group) and other unrelated parties such as the Temasek Group.

(a) the words used in the third publication were largely repetitious and contained the same and/or similar defamatory contents as the meanings referred to in paras 3 and 6 above, in the way they were meant or understood in their natural and ordinary meaning and/or by innuendo. (see para 29 of the SOC, p 116 IP).

[20] The plaintiffs immediately proceeded to instruct their solicitors to institute legal action against the defendant wherein this action was filed on 26 November 2010.

[21] However, even after obtaining the said interim injunction, the defendant deliberately breached the same and this time went on to circulate 14 defamatory separate emails of a similar nature to the first, second and third publications to a wide range of readers that include the first plaintiffs competitors and unrelated third parties (see pp 98–169 CBDA).

THE ISSUES BEFORE THIS COURT

[22] The issues to be tried that were filed are as follows:

(a) whether the words in the first, second and third publications ('the three said publications') refer to both of the plaintiffs?

(b) whether the words in the first, second and third publications are defamatory in that they were calculated to injure the reputations of the plaintiffs?

(c) whether the defendant published the first, second and third publications? A

(d) whether the defendant by her conduct and/or behavior acted in a defamatory manner towards the plaintiffs and the likelihood of the defendant continuing to engage in libel towards the plaintiff if not restrained by a permanent injunction? B

DECISION OF THE COURT

First issue

(a) Whether the words in the first, second and third publications refer to both the plaintiffs. C

(i) from the outset, there is no ambiguity or doubt as to who the defendant was casting aspersions upon. Both the first plaintiff and the second plaintiff have been referred to in various parts of the three said publications jointly and respectively, as is clearly evidenced by all the relevant emails in the said publications exhibited in CBD and also CBDA. D

(ii) therefore the first issue has been answered in the affirmative, that the words in the first, second and third publications clearly refer to the plaintiffs. E

Second issue

(b) Whether the words in the first, second and third publications are defamatory in that they were calculated to injure the reputations of the plaintiffs. F

(i) for ease of reference, certain excerpts of the three said publications are produced herein below:

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(1) from the first publication:

[95] email dated 14 August 2010 (p 10-11 CBD)

SUBJECT: WONG SIEW YAP AND HIS TEAM USE THEIR POSITION IN MOX TO ABUSE OF POWER AND CORRUPTION H

Wong Siew Yap (WSY) uses Tan Sri Dr Ahmad Tajuddin Bin Ali's (Chairman, MOX) relative (Selangor CPO) to have Selangor CID Chief SAC11 Abu Bakar Mustafa comes to our office on Friday 6.02.2004 to arrest both my brother Lee Chin Chai and me (female). I

Hui Feng Huey (WSY's team) falsifies Malaysian Oxygen Berhad (3928-D) letterhead dated 2.06.2004 to take my Bank Guarantee.

Ng Cheng Meng (WSY's team) with Wong Tow and Gasline drivers consficate my customers' cylinders and tell not to buy and pay me.

WSY using the lawyer, Rajes Hisham Pillai & Gopal base on the following false claim to obtain court judgment in default of defence on 1.11.2004.

... I did not owe MOX this amount because the next day of my police detention, WSY and his team using their MOX position to take all the cylinders.

I have lodged a complaint to securities Commission on 11.07.2007 and 13.12.2007 why RM5 million worth of cylinders lost on 5.02.2004 did not mention in MOX's Annual Report 2004 Cammie Leong says Sujatha can help them to close my case.

In 2004, MOX is a public listed company, WSY and his team use their position in MOX:

(a) to lodge a false police report to take away my company MOX distributorship;

(b) make a falsified claim to obtain High Court order to wind up my company on 10.01.2007.

WSY and his team use their position in MOX to above power and corruption has caused to MOX to make less profit since 1980.

By arresting Lim Yeow Chee (2004 false police case informer) the truth will reveal whereby the government and MOX shareholder can recover at least multi-million ringgit from Lim Yeow Chee, Wong Siew Yap and his team, LTS and Wong Tow.

[95] email dated 24 September 2010 appending email dated 14 August 2010 (page 16CBD)

... I have clearly stated complaining against Wong Siew Yap and his team using their position in MOX (a reputable, listed and multinational company).

(ii) for their personnel benefits by conspiring with LTS (transport) and Wong Tow (distributor) to cheat MOX;

(iii) victimise my company, my brother and myself.

1. WSY uses Tan Sri Datuk Dr Ahmad Tajuddin bin Ali's (Chairman MOX) relative (Selangor CPO) to lodge a false police report that MOX lost RM5 million worth of cylinders on 5 February 2004.

2. WSY using the lawyer, Rajes Hisham Pillai & Gopal, to obtain court judgment in default of defence on 1 November 2004 using the following false claim:-

3.1: unretumed cylinders amounting toRM271,950.00. I did not owe

MOX this amount because the next day of my police detention, WSY and his team using their MOX position to take all the cylinders;

3.2: outstanding payment amounting to RM134,765.83. The actual amount outstanding is RM78,960.83;

4: after obtain High Court order to wind up my company on 10 January 2007, they send monthly statement claiming that my company still owing MOX-Linde Gases Sdn Bhd (100783-W) RM94,687.83.

late 2009 and early 2010, my brother Lee Chin Chai l/C No. 520720-10-5169 go to Maybank-Damansara Jaya, UMW Toyota-Section 14 and Ambank-Jalan Yap Kwan Seng to take car loan. They reject Lee Chin Chai because WSY using MOX for bankruptcy. Both my brother Lee Chin Chai and I, Lee Pek Lan, DID NOT give any personal guarantee to MOX.

[95] email dated 28 September 2010 appending email dated 14 August 2010 (p 20 CBD)

WONG SIEW YAP AND HIS TEAM USE THEIR POSITION IN MOX MALAYSIA TO ABUSE OF POWER AND CORRUPTION

WSY works in MOX since 1988 and belongs to Soh Tong Hwa (STH) team. They conspire with LTS to (1) steal cylinders (2) steal liquid from the tank and (3) make false claim on transport.

(i) There were also three attachments with theses emails which appear on pp 26-29 CBD which imply defamatory imputations against the plaintiff, which have been described in further detail in the paragraphs above.

(2) *From the second publication*:

[95] email dated 15 October 2010 (page 56-63 CBD)

I have complaint to Tan Sri Dr Ahmad Tajuddin Bin Ali (Chairman, MOX) but no action taken by him. Wong Siew Yap has said to me he not afraid of lawyers as his legal fees is paid by MOX whereas I'm using my own money. Legal fee drain my money and my 6 years of suffering, humiliation and being a victim of false police report make by Wong Siew Yap and his team and false claim by you to obtain High Court order to wind up company that cause me to complaint to the government and companies/organisation linked to MOX.

Wong Siew Yap refuse to honour Chris Brown (General Manager ISP MOX) letter 'Temporary suspension of supply of industrial gases' dated 11.2.2004 even I have the clearance letter from head Quarters of Police Department's letter 'MELEPASKAN DARI JAMINAN POLIS' dated 12.4.2004. Chris Brown's letter stated he temporary suspend my company account pending the outcome of the police investigations."

On 22 July 2008 at MOX, Devamala in the presence of Cammie Leong and an undisclosed man has admitted on 5 February 2004 there isn't any cylinder

lost. She hinted they have the backing of Tan Sri Dr Ahmad taaajuddin Bin AH Cammie Leong hinted Sujatha would help to close this case.

As a Assistant General Manager & Head Investor Affairs & Complaint, Sujatha want to conceal the truth by telling lies, diverting the topics and dragging time by giving me a letter that I'm the person who lodge the police report on the cylinders missing on 5 February 2007.

Can you deny that Hue Feng Huey has abuse his power as a Customer Service Centre Manager to falsify Malaysian Oxygen Berhad (3928-D) letterhead dated 2.06.2004 to take my RM40,000.00 bank guarantee?

Wong Siew Yap and his team have abuse of power and corruption based on;

- Wong Siew Yap (WSY) uses Tan Sri Dr Ahmad Tajuddin bin Ali's (Chairman MOX) relative (Selangor CPO) to have Selangor CID chief SAC II Abu Bakar Mustafa comes to our office on Friday 6 February 2004 to arrest both my brother Lee Chin Chai and me (female). They lodge a false police report that MOX lost of RM5 million worth of cylinders on 5 February 2004.

- Hue Feng Huey falsify Malaysian Oxygen Berhad (3928-D) letterhead dated 2.06.2004 to take my RM40,000.00 bank guarantee whereby on that date is known is MOX Gases Berhad (100783-W).

- After I hand in the appeal letters to reinstate my company MOX distributorship from YB Datuk Astaman Abdul Aziz (Member of Parliament, Titiwangsa) dated 14 May 2004 and YB Mr. Yew Teong Look (Member of Parliament, Kawasan Wangsa maju) dated 15 Maay 2004, Ng Cheng Meng (WSY's team) with Wong Tow and Gasaline drivers confiscate my customer's cylinders and tell not to buy and pay me. Ng Cheng Meng immediately stop the confiscation after I hand in the appeal letter to reinstate my company MOX distributorship from Y.Bhg Dato' Noh Bin Haji Omar (Timbalan Menteri Keselamatan Dalam Negeri) dated 3 June 2004. Few years later, Ng Cheng Meng want to confiscate my customers' cylinder by making another police report in Ampang based on 2004 police report.

- You make a false claim to High Court by including the cylinders taken on 7 February 2004 which you valued RM271,950.00 to wind up my company. *My lawyer Norisman Bin Ismail did not defend my case as he favours you and Wong Siew Yap. My lawyer Theng Book (taken RM20,000.00 from us) did not appeal my case as he favours you and Wong Siew Yap instead he tell us to let the company wind up by you which we strongly objected and very hurt. Due to Norisman Bin Ismail did not defend on 1 November 2004. You use law to bully us, kill my company built up using blood & sweat money and make us suffer in silence.*

- Wong Siew Yap and his team influence Sujatha Sekhar Naik, Assistant General Manager & Head Investor Affairs & Complaints, Securities Commission Malaysia to give me the letter SC/GC/CD/3/80-2007 dated 5 May 2009 stating that I'm the person who lodge the police report on the

cylinders missing on 5 February 2007.

- Wong Siew Yap and his team have lodge a police report using Lim Yeow Chee (my lorry driver/nephew) as the informer that my company stolen RM5 million worth of cylinders from MOX on 5 February 2004?

Because of the police report:

[95] I was remand in Subang Jaya police lockup for 10 days;

[95] Tarnish our reputation as this RM5 million loss of cylinders has reported in the TV and newspapers (The Star, Malay Mail and New Straits Times-Saturday 7 February 2004;

[95] Suspend and subsequently terminate my company MOX distributorship;

[95] Advertise the termination in the newspaper to enable the informer Lim Yeow Chee and Wong Tow (MOX distributor) to rob my company good customers;

[95] Wong Siew Yap and his team using their position in MOX have taken away all the cylinders on 7 February 2004?

- On 8 January 2007, Puan Jamilah (secretary to YB Dato' Noh Bin Haji Omar) calls Tan Sri's secretary. Subsequently, she faxes Tan Sri reply dated 4 January 2007. Puan Jamilah informs her that we can immediately make payment at Tan Sri office and at the same time want to sign the contract. *Tan Sri's secretary rejects our request and insists we deal with Wong Siew Yap*.

- You obtain High Court order to wind up my company on 10 January 2007 by including the all cylinders (you billed as RM271,950.00) taken by Wong Siew Yap and his team on 7 February 2007 and you deny the fact we can pay on 8 January 2007.

- Can you commit there isn't any liquid, cylinders lost and false claim on transport since 1980?

- Maybank letter 27-14534/LPUSK dated 26 August 2008 suggest I lodge a police report and let the police investigate with Malaysia Oxygen Berhad on Hui Feng Huey. Are you admitting that Wong Siew Yap and his team have lodged a police report using Lim Yeow Chee (my lorry driver/nephew) as the informer that my company stolen RM5 million worth of cylinders from MOX on 5 February 2004?

- Wong Siew Yap does not want to uplift the suspension and instead dragging time to allow you to obtain High Court order to wind my company.

- On 22 July 2008 at MOX, Devamala in the presence of Cammie Leong and an undisclosed man has admitted on 5 February 2004 there isn't any cylinder lost.

- Wong Siew Yap and his team have taken all the cylinders on 7 February 2004 whereby you include this taken cylinders to make a claim against us for the High Court order.

- Late 2009 and early 2010, my brother Lee Chin Chai l/C No. 520720-10-5169 got to Maybank Damansara Jaya, UMW Toyota-Section 14 and Ambank Jalan Yap Kwan Seng to take car loan. *They reject Lee Chin Chai because you inform the financial institutions that he is blacklisted by MOX for brankruptcy*.

I complaint to the government and companies/organisation linked to MOX by relating the truth and facts of the whole episode of Wong Siew Yap and his team using their position to abuse of power and corruption.

Legal fee drain my money

My 6 years of suffering, humiliation and being a victim of false police report make by Wong Siew Yap and his team and false claim by you to obtain High Court order to wind my company.

Is to obtain justice for my lose of MOX distributorship, embarrassment, tarnish in image & reputation, mental & financial torture and suffering that my brother and I are facing Wong Siew Yap cannot use his lawyer to make Lee Chin Chai I bankruptcy after winding my company as we DID NOT sign and DID NOT give any personal guarantee to MOX.

You want to sue me for defamation to silence me to complaint to the governments and companies/organisation linked to MOX. You are using law to stop the government and/or anyone to reveal truth of this whole episode of Wong Siew Yap and his team abuse of power and corruption.

How are you going to compensate me being a victim of false police report make by Wong Siew Yap and his and false claim by you to obtain High Court order to wind my company?

(3) From the third publication:

[95] email dated 31 October 2010 (pp 68–71 CBD)

- largely a repeated publication of the earlier email dated 15 October 2010 (second publication).

[23] Applying the test of what constitutes a defamatory nature of a statement enunciated in *Syed Husin Ali v Sharikat Perchetakan Utusan Melayu Bhd & Anor* [1973] MLJ 56; [1973] 1 LNS 146, Mohamed Azmi J, as His Lordship then was, (when referring to *Gatley on Libel and Slander* 6th Ed at p 4, para 4 held:

Gatley on Libel and Slander, 6th Ed at p 4,para 4 says:

There is no wholly satisfactory definition of a defamatory imputation. Any

> imputation which may tend to lower the plaintiff in the estimation of right-thinking members of society generally to cut him off from society or to expose him to hatred, contempt or ridicule, is defamatory of him. *An imputation may be defamatory whether or not it is believed by those to whom it is published*.

Further, at p 14 para 31, Gatley says:

> A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession, or to injure his financial credit. The standard of opinion is that of right-thinking persons generally. *To be defamatory an imputation need have no actual effect on a person's reputation; the law looks only to its tendency*.'

Thus, the test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion of others, although no one believes the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty.

[24] The plaintiffs' counsel, Ms Joanna Thevathasan submitted, and I agree, that irrespective of whether the readers of the emails in the three said publications believed them or not; *the imputations of, inter alia, abuse of power, corruption, dishonesty, falsifications of legal documents, misappropriation of the first plaintiffs funds and monies that would cause the shareholders to be deprived of their due profits, malice and all other vicious allegations* cast by the defendant in the three said publications would indeed have the tendency to lower the plaintiffs in the estimation of right-thinking members of society generally and expose the plaintiffs to hatred, contempt or ridicule. This is so since:

(a) the defendant attacked the moral character of the second plaintiff and the dignity and/or standing of the first plaintiff in the corporate world wherein both the first and the second plaintiff enjoy a local multinational presence, using words that were calculated to injure the plaintiffs' reputations in the eyes of right-thinking members of society generally.

(b) any ordinary reasonable person would construe the words in the said publications to mean the various meanings attributable by the words complained of as listed in the paras above to make the plaintiffs, inter alia, out to be without honour and credibility, corrupt and cheats.

(c) based on this, the second issue is also answered in the affirmative and the said three publications are clearly defamatory of the plaintiffs.

Third issue

(iii) Whether the defendant published the first, second and third publications?

[25] The emails in the third publications in CBD showed they were *sent* at the said dates and times and were *From: Lee Pek Lan*

[26] The second plaintiff (PW1), Mr Wong Siew Yap, who is the managing director of the first plaintiff gave evidence that the email in the first publication had come to his attention because it had been forwarded to him by some of the recipients within the first plaintiff's group of companies (see answer to *Q23A* in witness statement of PW1 'WSPW1').

(a) the plaintiffs also referred to pp 12 and 39 of CBD that showed that a Mr Guy De Backer of the first plaintiff's Linde Group and also a Mr Eric Matthijs, a sales and marketing manager of Chemogas in Belgium had received the email sent by the defendant

(b) this is evidence that there was indeed publication of the defendant's emails wherein there was a wide range of readers.

(c) in *Ng Koo Kay Benedict and Another v Zim Integrated Shipping Services Ltd* [2010] SGHC 47, the High Court in Singapore recognised publications by way of disseminations of emails where the email messages had been received and seen by a recipient other than the person defamed, who is capable of understanding it, and concluded that it has therefore been published. *The court in that case also inferred that substantial publication of the defamatory statements had taken place given the large number of persons and email addresses on the list of recipients*.

At p 873, Lai Siu Chiu J, stated:

Was the statement published?

As a general principle, publication takes place where the defamatory material is published by the defendant and communicated to a third party (other than the claimant). At law, publication to even one person will suffice to make out a finding of liability, with the scale of publication affecting, instead, the quantum of damages: see Gatley on Libel [11] at para 6.1 (citing *The Capital and Counties Bank, Limited v George Henty & Sons* [1882] 7 App Cas 741 at 765.

In the book by M Collins *The Law of Defamation and the Internet (Oxford University Press, 2005) ('Collins')*, the learned author succinctly summarised the law on the circumstances in which the court could infer substantial publication for materials that are made available on the internet, as follow (para 5.04):

Proof that internet communications have been published is therefore not usually a difficult task. *Every email-message which has been received and seen by a recipient, other than the person defamed, who is capable of understanding it, has been published*.

At p 880, para 45, His Lordship went on to say:

> *With the list of recipients, I hold that the plaintiffs have established that there was substantial publication of the statement within Singapore. I note that Scofield could not positively aver that every person on the list of recipients had downloaded and accessed the email in Singapore. However, given the large number of persons and email addresses on the list of recipients, it seems more likely that not that a not insubstantial number of persons would have downloaded and read the email in Singapore As such, I would infer that substantial publication of the statement had taken place in Singapore through dissemination of the email, applying the test suggested by Collins* (as quoted above).

(d) thus on that score, there was clear publication of the defamatory emails to people other than the plaintiffs herein.

[27] The defendant also sent the second and third publications to not only the plaintiff's solicitors but various other recipients from the local government agencies, the first plaintiff's group in Singapore, the first plaintiff's competitors ie the Airproducts Group and unrelated companies such as the Temasek Group, as clearly evidenced by the list of recipients in these emails.

[28] The list of recipients on all the three said publications exhibit that the email addresses such as *info@linde.com, info@dk.aga.com, contract-france@fr.linde-qas.com, info@chemogas.com, infor@wonderwind.de, infor@se.aga.com, info@soxal.com, infosale@airproducts.com, info@sprm.gov.my*, customer service, investor relations *which demonstrate that the emails in the said publications have been treated as general emails accessible by anyone stationed and/or designated to man the various companies service desk who are usually tasked with opening emails from the public to attend to the various customer needs*.

(a) in such a situation, it is akin to the principle of presumed publications since by their very nature such general emails would normally be seen by persons who are third parties.

(b) therefore, there is a legal presumption that these emails are published on being sent without actual proof that anyone did in fact read them. In the book of the *Law of Defamation in Singapore and Malaysia*, 2nd Ed by Keith R Evans published by Butterworth, 1993, at p 34, the writer states:

> Similarly there may be presumed publication of other type of materials sent in the post. *Telegram and postcards, by their very nature, would normally be seen by persons other than those to whom they are addressed*, and it would be quite easy to demonstrate publication to third parties of defamatory allegations contained in such transmissions. *Indeed, there is a legal presumption that these are published on being sent through the post without actual proof that anyone did in fact read them*. The presumption is theoretically rebuttable, although it is

very difficult to conceive the rebutting evidence to the effect that no one had read the document could be given.

[29] The above was adopted and applied in the case of *Tan Lan Chu v Robbin Ong Kim Chuan* [2011] MLJU 632; [2011] 1 LNS 826; [2012] 5 MLRH 420 where it was held, at p 10:

> *The same principle applies, that there is a presumption that they are published once they are transmitted and received through the fax machine without actual proof that anyone did in fact read them since by their very nature, would normally been seen by persons other than those to whom they are addressed.*

[30] The defendant also went on to breach the interim injunction by sending 14 defamatory emails to various of the first plaintiff group of companies overseas such as in Canada, France, Italy, Korea and Singapore as can be seen by the emails in CBDA and therefore engaged in further publication of defamatory material against the plaintiffs.

Therefore, based on the above, the third issue is also answered in the affirmative and the defendant has been shown to have clearly published not only the three said publications but the subsequent 14 defamatory emails (in breach of the said interim injunction).

Fourth issue

(iv) Whether the defendant by her conduct and/or behavior acted in a defamatory manner towards the plaintiffs and the likelihood of the defendant continuing to engage in libel towards the plaintiff if not restrained by a permanent injunction?

[31] The plaintiffs submit that in light of the above nature and scope of the three said publications to the wide range of readers, both locally and worldwide including the first plaintiff's competitors and unrelated groups, the defendant has demonstrated defamatory conduct and ill will towards the plaintiffs.

[32] Further in view of the defendant's subsequent breach of the interim injunction order dated 18 April 2011 wherein the defendant again circulated 14 similarly defamatory emails to a largely international group of readers, the defendant has, evidenced by her conduct, a very strong likelihood or inclination to continue engaging in libel towards the plaintiffs if she is not restrained by a permanent injunction against her.

Therefore, the fourth issue is also answered in the affirmative that the defendant by her conduct and/or behavior has been clearly shown to have acted in a defamatory manner towards the plaintiffs and that there is a great likelihood or inclination of the defendant continuing to engage in libel towards the plaintiffs if not restrained by a permanent injunction.

THE REMEDIES SOUGHT BY THE PLAINTIFFS/QUANTUM OF DAMAGES

(a) *A permanent injunction against the defendant/her agents from further circulating and publishing defamatory words against the plaintiffs*.

[33] Given the behavior and conduct of the defendant in this matter who has not shown any remorse or regret over her actions and who dared to breach the interim injunction order of court pending the completion and disposal of this matter, a permanent injunction as prayed by the plaintiffs in para 38(a) of the statement of claim is allowed (*Tan Lan Chu v Robbin Ong Kim Chuan* [2011] MLJU 632; [2011] 1 LNS 826; [2012] 5 MLRH 420 and *Dato' Mohamad Salim Fateh bin Fateh Din v Nadeswaran a/l Rajah (No 1)* [2012] 10 MLJ 203; [2013] 4 CLJ 961 HC refers).

(b) *The plaintiffs also prayed for general and aggravated damages*

[34] It is trite law that *libel is a tort actionable per se ie without proof of actual harm*. The law presumes that when a man's reputation is assailed, some damage must result (see *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & other appeals* [1995] 2 MLJ 493; [1995] 2 CLJ 912).

(i) in *Pemegang Amanah Lembaga Zakat dan satu lagi lwn Hj Saari bin Sungib* [2014] 10 MLJ 65; [2013] 10 CLJ 588, the High Court referred to the *Federal Court's* case of *Ling Wah Press (M) Sdn Bhd v Tan Sri Dato Vincent Tan Chee Yioun* [2000] 4 ML J 77; [2000] 3 CLJ 728 and held at para 77 p 616:

> *Awards of damages in defamation cases cannot be equated with awards of damages in personal injury cases. The award of damages given to the plaintiff in a defamation case serves as a vindication of the plaintiff to the public and as a consolation to him for a wrong done.*

[35] In *Gatley on Libel and Slander* 11th Ed, it states that the factors that can be taken into account when assessing damages are the conduct of the claimant, his position and standing, the nature of the slander or libel, the mode and extent of the publication and the absence or refusal of any retraction or apology. The basic guideline for assessment of damages are set out in *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56; [1973] 1 LNS 146; *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & other appeals* [1995] 2 MLJ 493; [1995] 2 CLJ 912.

(a) the plaintiffs' submitted that the position and standing of the plaintiffs has to be taken into consideration in awarding damages. Ms Joanna Thevathasan argued that the first plaintiff is a leading industrial gas supplier in Malaysia and is a subsidiary of an international gas and

engineering company having its head office in Germany. In other words, it is part of an international group and its presence is worldwide. With reference to p 6 of exh P1 and the last Q & A No 36 of WSPW1, as at 18 June 2013, the first plaintiff is seen to generate an annual revenue of approximately RM802,000.

The second plaintiff is the managing director of the first plaintiff ie Linde Malaysia Sdn Bhd and also enjoys a regional and multinational presence and high standing in society.

(b) apart from that the gravity and seriousness of the libel has also to be taken into consideration. The defendant has attacked the dignity of the first plaintiff and moral character of the second plaintiff with allegations of, inter alia, abuse of power, corruption, dishonesty, falsifications of legal documents, misappropriation of the first plaintiff's funds and monies.

(c) the size and influence of the circulation is also another factor. The extent of the circulated emails reaches various other recipients within the Linde Group locally and internationally, from the local government agencies to the first plaintiff's competitors ie the Airproducts Group and unrelated companies such as the Temasek Group, as clearly evidenced by the list of recipients.

(d) the effect of the publication has caused mental distress, hurt, anxiety and anguish to the second plaintiff who gave evidence that the defendants' emails were brought to his attention by other recipients within the one plaintiff group and had exposed him to scandal, odium and contempt and that he suffered considerable embarrassment and distress.

(e) the behavior of the defendant is disrespectful. The defendant has always been informed of the various court dates and put to notice that she had to attend court for all hearings. Notwithstanding the interim injunction order dated 18 April 2011 by the Shah Alam High Court (another court), the defendant continues to libel the plaintiffs with 14 emails (she has admitted receipt of the said order which was served on her through the plaintiffs' solicitor's letter dated 5 July 2011 in her defamatory emails). See p 100 CBDA, where the defendant has written:

RHRG want me to attend Shah Alam High Court on the pretext of defamation by threaten to put me in prison as per his letter dated 12.1.2011 and 5 July 2011. Wong Siew Yap fail to take defamation law suit against me.

This clearly demonstrates the complete lack of remorse on the defendant's part and the absence or refusal of any correction, retraction or apology from the defendant.

[36] In line with the principles of *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & other appeals* [1995] 2 MLJ 493; [1995] 2 CLJ 912 and also the High Court cases of *Dato' Mohamad Salim Fateh Din v Nadeswaran Rajah* [2012] 10 MLJ 203; [2013] 4 CLJ 961 and *Chan Yoke Sim vs Choong Teck Fook and Ors* [2014] 2 MLJ 117; [2013] 1 LNS 425, the plaintiffs are entitled to receive an award for aggravated damages so as to send a strong message against the defendant who is in a position to disseminate information widely through the internet that she must exercise a proper degree of care and diligence not to injure others (see p 979 *Dato' Mohamad Salim Fateh Din v Nadeswaran Rajah* [2012] 10 MLJ 203; [2013] 4 CLJ 961.

(a) in the case of *Ling Wah Press (M) Sdn Bhd v Tan Sri Dato Vincent Tan Chee Yioun* [2000] 4 ML J 77; [2000] 3 CLJ 728, the Federal Court when referring to the case of *Sutcliffe v Pressdram* [1991] 1 QB 153 at p 184 states:

> The conduct of the defendant which often be regarded as aggravating the injury to the plaintiff's feelings to support a claim for aggravated damages, includes a failure to make any or any sufficient apology and withdrawal; and a repetition of the libel persistence by way of prolonged and hostile cross-examination of the plaintiff.

(b) in the case of *Tan Lan Chu v Robbin Ong Kim Chuan* [2011] MLJU 632; [2011] 1 LNS 826; [2012] 5 MLRH 420 the court awarded RM30,000 in a similar situation where the defendant did not appear to defend herself and where the defamatory letters had been faxed only to the plaintiff's office and were deemed to have been read by the plaintiff's staff locally.

(c) in contrast to the case of *Tan Lan Chu*, on the facts of this case, the dissemination of defamatory words through the defendant's emails in the three said publications and more, were far more widespread and far reaching, and in fact has reached an international groups of readers in a number of countries.

[37] The plaintiffs prayed for an award of general damages and aggravated damages that would vindicate their reputations both in Malaysia and internationally, and seek a total sum of RM500,000: RM200,000 for general damages and RM300,000 for aggravated damages.

In the circumstances, I feel, RM150,000 for general damages and RM50,000 for aggravated damages is sufficient to vindicate the plaintiffs in this case.

A CONCLUSION

[38] The plaintiffs claim is allowed. Prayer 38 (a) SOC for an order for a permanent injunction to be entered against the defendant to restrain her, her servants or agents from further publishing the defamatory words is allowed. General damages (prayer b) and aggravated damages (prayer c) are allowed at RM150,000 and RM50,000 respectively. Interest of 8% under prayer 38 (d) and interest of 5% under prayer 38 (e) are also allowed.

B

C COSTS

[39] Ms Joanna Thevathasan prayed for RM20,000 for costs. I feel, since the defendant was absent during trial, a sum of RM15,000 for costs is adequate.

D *Claim allowed, permanent injunction sought by plaintiffs granted and RM150,000 as general damages and RM50,000 as aggravated damages awarded to them.*

Reported by Ashok Kumar

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